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# CARD 1

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1914

No. [redacted]58

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RUAL F. TAYLOR, PLAINTIFF IN ERROR,

*vs.*

MRS. ALLIE PARKER (NEE COLLINS), JOSEPH D. McCOY, W. A. T. HILTON, LEGAL GUARDIAN OF JOHN COLLINS, ET AL.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

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FILED SEPTEMBER 23, 1912.

(23,364)

(23,364)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1913.

## No. 349.

RUAL F. TAYLOR, PLAINTIFF IN ERROR,

*vs.*

MRS. ALLIE PARKER (NEE COLLINS), JOSEPH D. McCOY, W. L. T. HILTON, LEGAL GUARDIAN OF JOHN COLLINS ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

### INDEX.



JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 28, 1913.

1 UNITED STATES OF AMERICA, *ss:*

To Mrs. Allie Parker (nee Collins), Joseph D. McCoy, W. L. T. Hilton, Legal Guardian of John Collins, Berry E. Collins, and Virgil Collins, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of Oklahoma wherein Rual F. Taylor is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John B. Turner, Chief Justice of the Supreme Court of Oklahoma, this 22d day of August, in the year of our Lord one thousand nine hundred and twelve.

JOHN B. TURNER,
*Chief Justice of the Supreme Court of Oklahoma.*

On this 3 day of September, in the year of our Lord one thousand nine hundred and twelve, personally appeared before me, the subscriber, —— —— and makes oath that he delivered a true copy of the within citation to —

——— ———,

Sworn to and subscribed the — day of ——, A. D. 190–.

#1734.

STATE OF OKLAHOMA,
*Bryan County:*

The undersigned attorneys of record for the defendants in error, Mrs. Allie Parker, nee Collins, Joseph D. McCoy, W. L. T. Hilton, legal guardian of John Collins, Berry E. Collins and Virgil Collins, hereby acknowledge due and timely service of the above and foregoing citation upon them for and on behalf of said Defendants in Error this the 26 day of August 1912.

C. HARDY,
CRUCE, CRUCE & BLEAKMORE,
*Attorneys for Defendants in Error,*
*Mrs. Allie Parker, et al.*

Filed Sep. 6, 1912. W. H. L. Campbell, Clerk.

2 In the Supreme Court of Oklahoma.

RUAL F. TAYLOR, Plaintiff in Error,
vs.
Mrs. ALLIE PARKER et als., Defendant in Error.

*Petition for Writ of Error and Assignment of Errors.*

Now comes the above named plaintiff in error, Rual F. Taylor and files this his petition herein for an allowance by the Chief Justice of this Court of a Writ of Error from this court direct to the Supreme Court of the United States in order that the records and proceedings herein may be reviewed by said Court and as ground therefor says that in the records, proceedings, and also in the rendition of the judgment in this cause in this Court there was drawn in question the construction of a Statute of the United States and the decision herein was against the title, right, privilege and exemptions specifically set up and claimed under said Statute and that thereby a manifest error hath happened to the great damage of this Plaintiff in Error. And Plaintiff in Error specifically complains and assigns the following errors committed by this court, the same being the highest Court in this State, as follows, to-wit:

First. This Court erred in holding that the words "alienable" and "inalienable" used to restrict the disposition of lands in the Supplemental Agreement with the Chickasaws and Choctaws (Act of July 1st, 1902, 32 Statutes, 642, 643, paragraphs 12, 15, 16) include disposition by will.

Second. Plaintiff in Error further assigns that this court erred in holding the effect of the Act of April 28th, 1904 (33 Statutes 573) was to make the laws of Arkansas theretofore put in force in the Indian Territory applicable to another class of persons and estates, to wit: Indians and their property in so far as it was alienable under the Act of Congress then bearing upon it. And further holding that the extension of the law of wills as contained in Mansfield's Digest did not enable the Indian to devise his allot/ment of land when restrictions on alienation had not been specifically removed.

3

Third. This court erred in holding that the will of Maggie Taylor, deceased, relied upon by the Plaintiff in Error to give him title and the right of possession to the lands and premises in controversy herein was null and void in so far as it attempted to will her individual allot/ment as a Chickasaw Indian, said individual allot/ment being the lands and premises in controversy herein.

Now therefore, Plaintiff in Error respectfully submits this his petition for the allowance of the Writ of Error to the Supreme Court of the United States in order that the errors assigned above may be duly corrected and full and speedy justice done to the parties to this law suit.

Wherefore premises considered, Plaintiff in Error prays that the writ of error be allowed herein in the manner prescribed by law.

C. C. HATCHETT,
*Attorney for Plaintiff in Error.*

[Endorsed legal guardian of John Collins, Berry E. Collins and lor. Plaintiff minors and Joseph D. McCoy, and their certain at- Error. Petitiors, administrators, or assigns: to which payment, well Aug. 22—19c made, we bind ourselves, our heirs, executors, and Clerk. By Jes jointly and severally by these presents. Sealed with

lated this — day of August, in the year of our Lord

4 UNITEDaine hundred and Twelve.

The Presidendy at a term of the Supreme Court of Oklahoma in a Judges of th in said Court, between Rual F. Taylor, plaintiff in s. Allie Parker, et al., defendants in error a judg- Because in dered against the said Rual F. Taylor, plaintiff in the judgment said Rual F. Taylor having obtained a Writ of Error homa before y thereof in the Clerk's Office of the said Court to equity of the gment in the aforesaid suit, and a citation directed suit between Allie Parker, W. L. T. Hilton, legal guardian of ker, (nee Coll Berry E. Collins and Vergil Collins, minors and ian of John Co citing and admonishing them to be and appear at in Error whert of the United States, at Washington, within 30 statute of, or late thereof.

the decision dition of the above obligation is such, That if the question the aylor shall prosecute said appeal to effect, and an- said State, on es and costs if he fail to make his plea good, then tion, treaties ation to be void; else to remain in full force and

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RUAL F. TAYLOR. [SEAL.]
W. H. GIRDNER. [SEAL.]
Z. McINTOSH. [SEAL.]
GREEN THOMPSON. [SEAL.]

livered in the presence of—

—.

. TURNER.

*f Justice of the Supreme Court of Oklahoma.*

ed: No. 1734 Rual F. Taylor vs. Mrs. Allie al. Bond. (Filed September 11, 1912. W. H. erk.)

RUAL F. TAYLOR, Plaintiff in Error,
vs.
ALLIE PARKER et al., Defendants in Error.

*Order Fixing and Approving Bond.*

dered that the Plaintiff in Error in the above styled use, make, execute and file herein a good and suffi he allowance of the writ of error in the penalty of

Allowed by
JOHN

And said bond being tendered it is hereby ordered that the same be and it is hereby approved.

[SEAL.] JOHN B. TURNER,
*Chief Justice of the Supreme Court of Oklahoma.*

Attest:
W. H. L. CAMPBELL, *Clerk.*
By JESSIE PARDOE, *Deputy.*

Endorsed: No. 1734. (Filed Sep. 14, 1912. W. H. L. Campbell, Clerk.)

10 In the Supreme Court of the State of Oklahoma.

No. —.

RUAL F. TAYLOR, Plaintiff in Error,
vs.
Mrs. ALLIE PARKER, nee COLLINS, JOSEPH B. McCOY, W. L. T. Hilton, Legal Guardian of John Collins, Berry E. Collins, and Virgil Collins, Defendants in Error.

*Stipulation.*

It is hereby stipulated by and between the attorneys for the plaintiff and defendants in Error that the Clerk of this court shall make up a copy of the record to forward with his return to the writ of error allowed in this case of the following papers and proceedings in this cause, to-wit:

1. He shall transmit a true copy of the case made, together with the petition in error as filed in this case.
2. He shall transmit a true copy of the opinion filed by the Supreme Court in this case, and the order made affirming said cause.
3. He shall transmit a true copy of the petition for re-hearing filed by the plaintiff in error in this case.
4. He shall transmit a true copy of the order overruling the petition for rehearing in this case.
5. He will transmit a true and correct copy of the petition for writ of error and assignment of errors.
6. He shall transmit a true copy of the writ of error allowed herein, and order fixing amount of bond.
7. He shall transmit a true copy of the bond filed and approved herein.

And copies of said proceedings and papers above mentioned shall constitute the record to be transmitted by the Clerk of this Court to the Clerk of the Supreme Court of the United States pursuant to the writ of error allowed and on file herein.

C. C. HATCHETT,
*Attorney for Plaintiff in Error, Rual F. Taylor.*

11 CRUCE, CRUCE & BLEAKMORE,
*Attorneys for Defendants in Error, Mrs. Allie Parker, nee Collins, Joseph B. McCoy, W. L. T. Hilton, Legal Guardian of John Collins, Berry E. Collins, and Virgil Collins.*

Endorsed: No. 1734. Supreme Court of Oklahoma. Rual F. Taylor, plaintiff in error, vs. Mrs. Allie Parker et al., defendants in error. Stipulation. (Filed September 14, 1912. W. H. L. Campbell, Clerk.)

12 In the Supreme Court of the State of Oklahoma.

Filed May 31, 1910. W. H. L. Campbell, Clerk.

No. 1734.

RUAL F. TAYLOR, Plaintiff in Error,

vs.

Mrs. ALLIE PARKER, JOSEPH D. McCOY, and JOHN COLLINS, VERGIL Collins, and Berry E. Collins, Minors, by W. L. T. Hilton, Legal Guardian, Defendants in Error.

*Petition in Error.*

Comes now Rual F. Taylor, Plaintiff in Error, and complains of Mrs. Allie Parker, Joseph D. McCoy, and John Collins, Vergil Collins and Berry E. Collins, minors, by W. L. T. Hilton, legal guardian, defendants in error, for that the said Mrs. Allie Parker, Joseph D. McCoy, John Collins, Berry E. Collins and Vergil Collins by W. L. T. Hilton, legal guardian at the regular term of the District Court of Johnston County, Oklahoma on the 31st day of January 1910, recovered a judgment by the consideration of said court against Rual F. Taylor, plaintiff in error herein, in a certain action then pending in the said court, wherein the said Mrs. Allie Parker, Joseph D. McCoy, John Collins, Vergil Collins and Berry E. Collins by W. L. T. Hilton, legal guardians were plaintiff and Rual F. Taylor was defendant. The original case made, duly certified, signed, settled and attested is hereunto attached for purposes of identification, marked "Exhibit A" and made a part of this petition in error, and the said Rual F. Taylor avers that there is error in the said judgment, record and proceeding in this to wit:

That the said court erred herein in sustaining the demurrer of the plaintiffs herein named as defendants in error to the answer of the defendant, herein named plaintiff in error, and upon the said defendant, herein plaintiff in error, declining to plead further, in rendering judgment against the said defendant, herein plaintiff in error, for the possession of the lands described in the said plaintiffs', herein defendants in error', petition and in holding that the will of Maggie Taylor, deceased passed no title to the said lands to said defendant Rual F. Taylor to which action of the Court the defendant then and there excepted.

2. That the said Court erred in overruling the motion of
13 the defendant, herein plaintiff in error, for a new trial, to which the defendant then and there excepted.

Wherefore the plaintiff in error prays that the said judgment so rendered be reversed, set aside and held for naught and that a judg-

ment be rendered by this court for the plaintiff in error, and against the defendants in error, and that the plaintiff in error be restored to all his rights that he may have lost by the rendition of said judgment and for such other relief as to the court may seem just.

RUAL F. TAYLOR,
*Plaintiff in Error,*
By HATCHETT & FERGUSON,
*Attorneys for Plaintiff in Error.*

Filed May 31, 1910.
W. H. L. CAMPBELL, *Clerk.*

14 *Case-made.*

EXHIBIT "A."

In the District Court of Johnson County, Oklahoma.

MRS. ALLIE PARKER, JOSEPH D. MCCOY, JOHN COLLINS, BERRY E. COLLINS, VERGIL COLLINS, Plaintiffs,
vs.
RUAL F. TAYLOR, Defendant.

*Index.*



"Exhibit A" to Petition in Error.

15 In the District Court within and for Johnston County, Oklahoma.

MRS. ALLIE PARKER, nee COLLINS, JOSEPH D. MCCOY, W. L. T. Hilton, Legal Guardian of John Collins; Berry E. Collins and Vergil Collins, Minors, Plaintiffs,
vs.
RUAL F. TAYLOR, Defendant.

*Case-made.*

Be it remembered that heretofore to wit, on the 30th day of October 1909, the plaintiffs, Mrs. Allie Parker, Joseph D. McCoy, and

W. L. T. Hilton, legal guardian of John Collins, Berry E. Collins and Vergil Collins commenced this action against said defendant, Rual F. Taylor by filing in the office of the District Clerk of Johnston County, Oklahoma their petition, which is in the words and figures as follows, to wit:

In the District Court of the Seventh Judicial District of the State of Oklahoma in and for Johnston County.

Mrs. ALLIE PARKER (nee COLLINS), JOSEPH D. McCOY, and W. L. T. Hilton, Legal Guardian of John Collins, Berry E. Collins, and Vergil Collins, Minors, Plaintiffs,

vs.

RUAL F. TAYLOR, Defendant.

*Petition.*

The petitioners, complaining of the defendant respectfully allege and state:

First. That the plaintiffs Allie Parker, nee Collins, and Joseph D. McCoy are members by blood of the Chickasaw Nation or Tribe of Indians, duly enrolled and recognized as such, and citizens of the United States and of the State of Oklahoma and residents of Johnston County State of Oklahoma: that the plaintiff W. L. T. Hilton is the duly and legally appointed guardian of John Collins, Berry E. Collins and Vergil Collins, as is shown by certified copy of letters
16 of guardianship hereto attached, marked "Exhibit A" and made a part of this petition, and that the said plaintiff W. L. T. Hilton is a citizen of the United States and of the State of Oklahoma, and a resident of Jefferson County, Oklahoma and that the above named John Collins, Berry E. Collins, and Vergil Collins are minors and citizens by blood of the Chickasaw Nation or Tribe of Indians, duly enrolled and recogonized as such and are citizens of the United States and residents of the State of Oklahoma and live and reside with the said W. L. T. Hilton in said Jefferson County State of Oklahoma. That the defendant Rual F. Taylor is a citizen by blood of the Chickasaw Nation or tribe of Indians duly enrolled and recogonized as such and a citizen of the United States and of the State of Oklahoma and a resident of Bryan County Oklahoma. That the lands involved in controversy in this action and hereinafter described are located and situated in Johnston County State of Oklahoma.

Second. That on the — day of —— 1900 at — in the Indian Territory Maggie Collins and the defendant Rual F. Taylor were lawfully intermarried and thereafter lived together as husband and wife until the date of the death on to wit the 25th day of March 1909, that there was no issue born of said marriage.

Third. That on the — day of —— 1900 the said Maggie Taylor, nee Collins was duly enrolled as a citizen by blood of the Chickasaw Nation or Tribe of Indians.

Fourth. That thereafter to wit on the — day of —— 1903, the said Maggie Taylor, nee Collins appeared at the land office of the Commission to the Five Civilized Tribes for the Chickasaw Nation or Tribe of Indians at Tishomingo Indian Territory and filed on and selected the following described lands to which she was entitled as her allotment as a citizen by blood of the Chickasaw Nation or Tribe of Indians to wit: south west quarter of south west quarter section 25, the north west quarter of north west quarter of section 36, the north east quarter of north east quarter of section 35, the north half of south west quarter of north west quarter of section 36, and the south east quarter of the south west quarter of the north
17 west quarter of section 36 and the north east quarter of the north west quarter of south west quarter of section 36, all in Township 4 south, Range 6 East and containing 160 acres of land in the Chickasaw Nation and now Johnston County State of Oklahoma.

That thereafter to wit on the — day of —— 1903 the Commission to the Five Civilized Tribes issued and delivered its certificates of allotment to the above described lands to the said Maggie Taylor, nee Collins, which said certificates are now in the possession of the defendant in this case, Plaintiffs hereby notify the defendant to produce said certificates upon the hearing of this cause or the plaintiffs will offer secondary evidence of the contents of said certificates.

Sixth. That thereafter to wit on the 20th day of December 1904 the principal chief of the Choctaw Nation or Tribe of Indians and the Governor of the Chickasaw Nation or Tribe of Indians issued to the said Maggie Taylor nee Collins, patents conveying to the said Maggie Taylor, nee Collins, in the name of Maggie Collins, the name under and by which she was enrolled and filed on and selected her allotment, conveying to her fee simple title to all of the above described lands. And thereafter, to wit on the 28th day of December 1904 said patents were duly approved by the Honorable Secretary of the Interior and were recorded and delivered to the said Maggie Taylor, nee Collins on the 28th day of December 1904. The said patents are now in the possession of the defendant in this cause and plaintiffs hereby serve notice upon the defendant to produce said allotment and homestead patents upon the hearing of the cause or the plaintiffs will offer secondary evidence thereof.

Seventh. That thereafter to wit on the 22nd day of March 1905 the said Maggie Taylor, nee Collins made executed and delivered to the defendant Raul F. Taylor, the last will and testament of her, the said Maggie Taylor, nee Collins by which she, the said Maggie Taylor nee Collins, attempted to will, bequeath and demise all of the above described lands unto her said husband Rual F. Taylor,
18 at her death in fee simple forever and at his death to go to his heirs and to his assigns, if sold by him before his death, a copy of which said last will and testament of the said Maggie Taylor, nee Collins is hereto attached marked "Exhibit B" and made a part hereof.

Eighth. The plaintiffs allege that said pretended will in so far as the same attempts to alienate the above described lands, same being

the surplus and homestead allotments of the said Maggie Taylor, nee Collins, deceased is null and void and contrary to the law and made in violation of section fifteen and sixteen of an act of Congress entitled An act to ratify and confirm an agreement with the Choctaw and Chickasaw Tribes of Indians and for other purposes and approved July 1, 1902.

Ninth. That on, to wit the 25th day of March 1905, the said Maggie Taylor nee Collins died without issue, leaving surviving her Joseph D. McCoy, a half brother and Allie Parker nee Collins a half sister, and John Collins, Berry E. Collins and Vergil Collins brothers of the said Allie Parker, nee Collins deceased. That Joseph D. McCoy, Allie Parker, nee Collins, John Collins, Berry E. Collins and Vergil Collins are the sole and only surviving and legal heirs of the said Maggie Taylor, nee Collins deceased.

Tenth. That on the 5th day of May 1905 the defendant Rual F. Taylor filed said will of the said Maggie Taylor, deceased for probate in the office of the Clerk of the United States Court for the Southern District at Tishomingo Indian Territory and made application for appointment as executor of said last will and testament and pending the hearing of said application B. R. Brundage was appointed as special administrator to take charge of and rent said lands and collect the rents therefrom, that said B. R. Brundage duly qualified and made bond as said special administrator, took charge of said land, rented the same and collected the rents thereon and now has in his hands and in his possession as the rents and revenues from
19 said lands the sum of $350.00.

Eleventh. That on the 10th day of April 1909, the mandate of the Supreme Court of the State of Oklahoma, directing the probate of said will was filed in the office of the District Clerk of Carter County, State of Oklahoma. And afterwards to wit on the 29th day of September 1909 said mandate was filed in the County Court of Carter County, State of Oklahoma and since the filing of said mandate the defendant Rual F. Taylor has re-entered into the possession of said lands and is renting the same and collecting the rents thereof and exercises and has control, ownership and dominion over said lands and denies all right, title and interest of the plaintiffs in and to said lands and claims to be the owner thereof under and by virtue of the terms of the said last will and testament of the said Maggie Taylor, deceased and ever since the execution of said will the said defendant has claimed to be the owner of said lands solely and only under and by virtue of the terms of said will hereinbefore mentioned.

Twelfth. The plaintiffs state that they are the sole and only legal heirs of the said Maggie Taylor deceased, that they have the legal estate in fee simple and an equitable estate in and to the following described real estate, same being the surplus and homestead allotment of the said Maggie Taylor, deceased and described in said will and attempted to be alienated by the said Maggie Taylor, deceased, to wit: The south west quarter of the south west quarter of section 25, the north west quarter of the north west quarter of section 36, the north east quarter of the north east quarter of section 35, the

north half of the south west quarter of the north west quarter of section 36, and the north east quarter of the north west quarter of the south west quarter of section 36, all in Township four south, Range 6 east and containing 160 acres of land, situated and located in Johnston County, State of Oklahoma and said plaintiffs are entitled to the immediate possession of same.

Thirteenth. Plaintiffs further state that they have been
20 damaged in the sum of $500.00 by said defendant unlawfully with-olding said possession.

Fourteenth. Plaintiffs further state that the defendant has unlawfully kept the plaintiffs out of said possession for the past four years and has collected and used for his own benefit during said time the debts and profits from said real estate amounting to the sum of $1,000.00.

Fifteenth. The plaintiffs allege and show to the court that the defendant Rual F. Taylor is insolvent and unable to respond in damages for the payment of any judgment which the plaintiffs might recover against him and is wasteful and extravagant in his habits and manner of living and if he is allowed to collect from the said B. R. Brundage the rent money now in the hands of said Brundage and to continue in possession of said lands, renting the same and collecting rents therefrom that the plaintiffs will suffer great and irreparable injury thereby and be unable to recover from the defendant any judgment in any amount that they may recover against him in this action.

Wherefore the plaintiffs pray judgment for the possession of said premises and for $500.00 damages for with-olding possession and for $1,000.00 for rents and profits, in all $1,500.00 for the appointment of a receiver to rent said land and collect the rents therefrom and hold the same subject to the further orders of the court in this action and for costs and other proper relief to which the plaintiffs in law may be entitled.

CRUCE, CRUCE & BLEAKMORE &
CORNELIUS HARDY,
*Attorneys for Plaintiffs.*

21 Allie Parker, nee Collins and W. L. T. Hilton being first duly sworn each for themselves state that they are one of the plaintiffs in the above entitled action, that they have read the above and foregoing petition and that the matters and things therein alleged they beliefe to be true and that they verify this application on behalf of themselves and of their co-plaintiffs and that there are no other facts known to the other parties herein not known to these affiants.

ALLIE PARKER.
W. L. T. HILTON.

Subscribed in my presence and sworn to before me this 30th day of October, 1909.

J. L. CUMMING,
*Notary Public.*

22 "Exhibit A" not attached to petition.
"Exhibit B" is as follows:

*Last Will and Testament of Maggie Taylor.*

I, Maggie Taylor, residing near Bee in the Indian Territory, being of sound mind and disposing memory and knowing the uncertainty of life and the certainty of death, hereby make and publish this my last will and testament to take effect upon my death, hereby revoking all wills previously made.

I direct that at my death the following disposition shall be made of all my property both real and personal:

1. I direct that at my death that all my just debts shall be paid out of my estate.

2. Being now possessed and seized of the following described lands situated in the Chickasaw Nation, Indian Territory, being specifically as follows:

S. W. ¼ of S. W. ¼ of section 25, N. W. ¼ of N. W. ¼ of section 36, N. E. ¼ of N. E. ¼ of section 35, the N. ½ of S. W. ¼ of N. W. ¼ section 36 and S. E. ¼ of S. W. ¼ of N. W. ¼ of section 36 and N. E. ¼ of N. W. ¼ of S. W. ¼ section 36, all in Township 4 south, Range 6 East and containing 160 acres of land, together with the improvements situated thereon, now therefore I hereby will bequeath and demise the same together with all other real estate of which I may be owner at my death unto my said husband Rual F. Taylor in fee simple forever at his death to go to his heirs and to his assigns if sold by him before his death.

3. I direct that at my death that all moneys, credits and all other personal property of which I am the owner, including all trust funds held by the United States Government for the Choctaws and Chickasaws shall go to and become the absolute property of my husband Rual F. Taylor.

4. I direct that at my death my husband Rual F. Taylor shall be appointed executor over my estate and he shall be appointed and qualify without giving bond required by law.

Having made provision for the disposal of all my property I now declare and publish this, as my last will and testament, at Durant, I. T., this the 22d day of March, 1905.

MAGGIE TAYLOR.

We, O. L. Shannon and C. C. Hatchett attesting witnesses to the last will and testament of Maggie Taylor, who signed the same in the presence of each of us, hereby sign our names hereto at the request of the said Maggie Taylor and in her presence and in the presence of each other on this the 22 day of March, 1905. She the said Maggie Taylor having declared the said will and testament hereto annexed to be her last will and testament.

O. L. SHANNON.
C. C. HATCHETT.

23 Said petition being endorsed as follows: Omitting the title of said cause:

Filed at Tishomingo Oct. 30th, 1909. E. Greene Dist. Clerk, by Bulah Betts, Deputy.

That thereafter and on the 3rd day of January, 1910, the defendant filed in said court his answer to the petition of the plaintiff- filed herein, which said answer is in words and figures following to wit:

24 In the District Court of Johnston County, Oklahoma.

Mrs. Allie Parker et al., Plaintiffs,
vs.
Rual F. Taylor, Defendant.

*Answer.*

Comes now Rual F. Taylor, the above named defendant and for his answer to the petition filed herein against him *and* says:

First. That he admits the allegations contained in the first paragraph of plaintiffs petition.

Second. Defendant further admits the allegations contained in the second paragraph of plaintiffs petition.

Third. Defendant admits the allegations contained in the third paragraph of plaintiffs petition.

Fourth. Defendant admits the allegations contained in the fourth paragraph of plaintiffs petition.

Fifth. Defendant admits the allegations contained in paragraph five of plaintiffs petition, except that he denies that he ever had said allot/ment certificates in his possession.

Sixth. Defendant further admits the allegations contained in the sixth paragraph of plaintiffs petition, except that he denies that the said patents were ever delivered to him and denies that he has had or now has the possession of said patents.

Seventh. Defendant admits the allegations contained in the seventh paragraph of plaintiffs petition.

Eighth. Defendant denies the allegations contained in
25 paragraph eight of plaintiffs' petition.

Ninth. Defendant admits the allegations contained in paragraph nine of the plaintiffs petition in so far as it alleges the relation of these plaintiffs to the said Maggie Collins and defendant denies the further allegations contained therein.

Tenth. Defendant admits the allegations contained in paragraph ten of the plaintiffs' petition.

Eleventh. Defendant admits the allegations contained in paragraph eleven in so far as the same alleges that the mandate of the Supreme Court of this State was issued and filed in the District and County Courts of Carter County Oklahoma, but defendant says that he has not collected any rents from said lands; defendant says that it is true that he claims to be the owner of said lands and it is true that he has attempted to and has exercised ownership over the same and that his only claim to said lands is under and by virtue of the last will and testament of the said Maggie Taylor, nee Collins, deceased.

Twelfth. Defendant denies each and every allegation contained in paragraph twelve of plaintiffs' petition except that the plaintiffs are the heirs of said Maggie Taylor, nee Collins and would inherit *said the* lands sued for herein for the will and testament of the said Maggie Taylor, nee Collins set forth in plaintiffs' petition.

Thirteen. Defendant denies the allegations contained in paragraph thirteen of plaintiffs' petition.

Fourteen. Defendant denies the allegations contained in paragraph fourteen of plaintiffs' petition.

Fifteen. Defendant denies the allegations contained in paragraph fifteen of plaintiffs' petition.

26 For affirmative answer herein defendant says that the will of the said Maggie Taylor, deceased, referred to herein and in the plaintiffs' petition, a copy being attached to the plaintiffs' petition was duly and legally and regularly admitted to probate by the Clerk of the United States Court for the Southern District of the Indian Territory and since the mandate of the Supreme Court of the State of Oklahoma has been filed in the office of the County Judge of Carter County, Oklahoma, said mandate has been ordered spread on the record of said court and the said will duly and regularly admitted to probate by said court, and that the said County Court has exclusive jurisdiction to admit the said will to probate. Defendant says that by the terms of said will the real estate sued for herein is the absolute property of this defendant in fee simple and all the right, title interest and estate of said plaintiffs therein has been divested and said plaintiffs have no right, title interest nor estate in and to any of said lands.

Premises considered defendant prays to be adjudged to go hence with his costs and general relief and that he be adjudged to be the owner of said real estate in fee simple.

(Signed) HATCHETT & FERGUSON,
*Attorneys for Defendant.*

27 Said answer, omitting the style of the cause being endorsed as follows:

Filed at Tishomingo, Jan. 21st, 1910. Ed. Green, District Clerk.

And that thereafter and on the 31st day of January, 1910, the plaintiffs filed herein their demurrer to the answer of defendant which said demurrer is in words and figures as follows:

28 In the District Court of Johnston County, Oklahoma.

No. 203.

Mrs. ALLIE PARKER et al., Plaintiffs,
**vs.**
RUAL F. TAYLOR, Defendant.

*Demurrer.*

Comes now the plaintiffs and demurr to the answer of the defendant filed herein for the reason that said answer upon its face does

not state and allege facts sufficient to constitute a defense to this action.

(Signed) CRUCE, CRUCE AND BLEAKMORE AND CORNELIUS HARDY,
*Attorneys for Plaintiffs.*

Which said demurrer, omitting the style of the cause is endorsed as follows:

Filed Jan. 31st, 1910. Ed. Green, District Clerk.

And that thereafter on the same date said demurrer was filed, to wit on the 31st day of January, 1910, the said demurrer came on to be heard before the District Court of Johnston County, Oklahoma, and said court after hearing the argument of counsel upon the same and being fully advised in the premises did sustain said demurrer and said defendant did then and there in open court except to the ruling of the court, and the said defendant then and there in open court declined to plead further but stated that he would stand upon his said answer, and the plaintiffs herein, in open court, waived all damages sued for herein, and the defendant stating in open court that his only claim to the land sued for herein was through the will of Maggie Taylor, nee Collins deceased, the court did then and there render judgment against said defendant and in favor of the plaintiffs, to which defendant duly excepted, said judgment
29 and decree being in words and figures as follows:

MRS. ALLIE PARKER (nee Collins), JOSEPH D. MCCOY, JOHN COLLINS, Berry E. Collins, and Virgil Collins, Minors, by W. L. Hilton, Their Legal Guardian, Plaintiffs,

VS.

RUAL F. TAYLOR, Defendant.

*Judgment.*

Now on this the 31st day of January, 1910, the same being one of the regular juridical days of this court, this cause came on to be heard upon the petition, answer and demurrer to the answer filed herein and the court after examining said pleadings and hearing argument of counsel doth sustain the demurrer of the plaintiffs to the answer of defendants, to which defendant excepts, and the defendant having elected to stand upon his answer and refusing to plead further herein and the plaintiffs in open court waiving all claim to damages and rents herein and it being agreed by counsel in open court that the only claim of defendant to the lands in controversy is based upon and is under and by virtue of the will as set forth in the pleadings and filed as an exhibit to the petition herein and it being agreed that the plaintiffs are the only heirs at law of the deceased Maggie Taylor, nee Collins, deceased and that if the said Maggie Taylor, deceased had no capacity to devise and vest title in said lands in the petition described, in the defendant, by virtue of said will, the plaintiffs are the owners thereof in fee simple and that defendant has no title or interest therein.

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k ten days from the date of the service of said case
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of in which to prepare and serve on the plaintiffs
their attorneys a case made and the plaintiffs herein
ed ten days from the date of the service thereof in
amendments to said case made. Said case made to
five days, thereafter upon five days' notice by either

A. T. WEST, *Judge*.

strict Court of Johnston County, Oklahoma.

No. 203.

KER, JOSEPH D. MCCOY, JOHN COLLINS, PERRY E. LINS, and VERGIL COLLINS, Plaintiffs

vs.

RUAL F. TAYLOR, Defendant.

Plaintiffs or Cornelius Hardy and Cruce, Cruce their attorneys of record:

foregoing case made is hereby tendered to and and each of you, as a true and correct case made in cause and as a true and correct statement and pt of all pleadings, motions, orders, evidence, find- and proceedings in the above entitled cause.

HATCHETT & FERGUSON,
*Attorneys for Defendant.*

cept and acknowledge due, legal and timely service foregoing case made on us this the 9 day of April,

CRUCE, CRUCE & BLEAKMORE, &
CORNELIUS HARDY,
*Attorneys for Plaintiffs.*

35 In the District Court of Johnston County, Oklahoma.

No. 203.

MRS. ALLIE PARKER, JOSEPH D. MCCOY, JOHN COLLINS, BERRY E. COLLINS, and VERGIL COLLINS, Plaintiffs,
vs.
RUAL F. TAYLOR, Defendant.

*Stipulation.*

It is hereby stipulated and agreed by and between, Cornelius Hardy, and Cruce, Cruce and Bleakmore, attorneys for the plaintiffs in the above styled cause and Hatchett & Ferguson, attorneys for the defendant in the above styled cause that the within and foregoing and attached case made in this cause is a true, correct and perfect and complete case made, and contains a full, true, perfect and complete statement and transcript of all the pleadings, motions, orders evidence, findings, judgments and proceedings in said cause, and we hereby agree that the same shall be signed and certified by the Honorable A. T. West the Judge who tried this case, as such.

Witness our hands this the 9 day of April, 1910.

CRUCE, CRUCE & BLEAKMORE &
CORNELIUS HARDY,
*Attorneys for Plaintiffs.*
HATCHETT & FERGUSON,
*Attorneys for Defendant.*

36 In the District Court of Johnston County, Oklahoma.

No. 203.

MRS. ALLIE PARKER, JOSEPH D. MCCOY, JOHN COLLINS, BERRY E. COLLINS, and VERGIL COLLINS, Plaintiffs,
vs.
RUAL F. TAYLOR, Defendant.

Be it remembered that on this the 18th day of April 1910 at 8:30 o'clock A. M. in Chambers at the court house in the City of Coalgate, Coal County, Oklahoma, the above and foregoing case made was presented to me, A. T. West, Judge of the District Court of Johnston County, Oklahoma, before whom said cause was tried, to be settled and signed as the original case made herein as required by law, by the parties to the said cause, and it appearing to me that the said case made had been duly made and served upon the plaintiffs within the time fixed by the order of this court and in the time and manner provided by law, and that counsel for both the plaintiffs and the defendants had in writing agreed that the said case made is a true,

correct and perfect case made and contains a true and correct statement and complete transcript of all the pleadings, motions, orders, evidence, findings, judgments and proceedings in said cause, and said case made having been examined by me, is true and correct and contains a true and correct statement and complete transcript of all the pleadings, motions, orders, evidence, findings, judgments and proceedings in said cause, I hereby allow, certify and sign the same as the true and correct case made in said cause and hereby order the clerk of said court to attest the same with his name and the seal of said court and file the same of record as provided by law.

Witness my hand this the 18th day of April, 1910.

A. T. WEST.
*Judge of the District Court of*
*Johnston County, Oklahoma.*

Attest:

ED. GREENE. [SEAL.]
*Clerk of the District Court of*
*Johnston County, Oklahoma.*

37 Endorsed on the back as follows: No. 1734. Superior Court. Rual F. Taylor, Plaintiff in Error, vs. Mrs. Allie Parker et al., Defendants in Error. Petition in Error and Case Made. Filed May 21 1910. W. H. L. Campbell, Clerk. #1734. Filed At Tishomingo, Apr. 22 1910. Ed. Greene, Dist. Clerk.

38 Supreme Court, May Term, 1912. May 14, 1912, First Judicial Day.

And thereafter at the May 1912 Term of said Court, on the 14th day of May, 1912, the following proceeding was had in said cause, to-wit:

#1734.

RUAL F. TAYLOR, Plaintiff in Error,
vs.
Mrs. ALLIE PARKER et al., Defendants in Error.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the court having considered the same finds that the judgment of the court below in the above cause should be affirmed.

It is therefore ordered and adjudged by the court that the judgment of the court below in the above cause be, and the same is hereby affirmed.

Opinion by Kane, J.

All the Justices concur, except Dunn, J. absent and not participating.

39 In the Supreme Court of the State of Oklahoma.

(Filed May 14, 1912.)

No. 1734.

RUAL F. TAYLOR, Plaintiff in Error,
vs.
MRS. ALLIE PARKER (nee Collins), JOSEPH D. McCOY, W. L. T. Hilton, Legal Guardian of John Collins, Berry E. Collins, and Vergil Collins, Defendants in Error.

1. The words "alienable" and "inalienable" used to restrict the disposition of lands in the supplemental agreement with the Chickasaws and Choctaws (act July 1, 1902 c. 1362, 32 Stat. 642, 643, pars. 12, 15, 16) include disposition by will.

2. The effect of the act of April 28, 1904, (33 Stat. 573), was to make the laws of Arkansas theretofore put in force in the Indian Territory, applicable to another class of persons and estates, to-wit: Indians and their property insofar as it was alienable under the acts of congress then bearing upon it. The extension of the law of wills enabled the Indian to devise all his alienable property by will made in accordance with the laws of the state of Arkansas, but did not operate to remove any of the restrictions theretofore placed upon lands of Indians by act of congress.

(Syllabus by the Court.)

Error from the District Court of Johnston County.

A. T. West, Trial Judge.

Affirmed.

C. C. Hatchett, attorney for plaintiff in error.

Cruce, Cruce & Bleakmore, attorneys for defendants in error.

40 *Opinion of the Court by*

KANE, *J.*:

This controversy grows out of the settlement of the estate of one Maggie Taylor, deceased, a duly enrolled Chickasaw Indian of part Indian blood, who prior to her death on the 25th day of March, 1905, attempted to will her allotment to her husband Rual F. Taylor, plaintiff in error herein. As stated by counsel for plaintiff in error in his brief,

"The sole and only question involved in this case is: At the time of the death of the said Maggie Taylor, which was on the 25th day of March, 1905, did she have the right to make a will effectual to convey her Indian allotment to her husband, plaintiff in error. If she did then the action of the trial court in sustaining a demurrer to the defendant's answer and rendering judgment against the defendant, now plaintiff in error, was error, and the plaintiff in error

is the rightful owner of the lands in controversy in this action. If the deceased, Maggie Taylor, did not have the right to make a will effectual to pass the title to her Indian allotment at her death, then her husband, Rual F. Taylor, will receive no part of her land, for under the laws in force in the Indian Territory at that time he inherited no interest therein, there having been no issue born of the marriage."

Hayes v. Barringer, 7 I. T. 697, 168 Fed. 221, involved the right of a full blood Chickasaw Indian, duly enrolled and entitled to an allotment under act June 28, 1898, c. 517, 30 Stat. 495, and the supplemental agreement of July 1, 1902, 32 Stat. 641, c. 1362, to devise her property to the plaintiff Barringer. The court of appeals of the Indian Territory held that under section 12 of the supplemental agreement, ratified by act of congress July 1, 1902, c. 1362, 32 Stat. 641, a Chickasaw Indian cannot alienate his homestead until 21 years have elapsed after the date of the allotment. That the only difference between homestead and surplus, or other half of the Indian's land, is in the length of time which must elapse before it is alienable. The circuit court of appeals affirmed the judgment of the court below, and held specifically that "the words 'alienable' and 'inalienable,' used to restrict the disposition of lands in the supplemental agreement with the Chickasaws and Choctaws (act July 1, 1902, c. 1362, 32 Stat. 642, 643, pars. 12, 15, 16) include
41 disposition by will." Counsel for plaintiff in error distinguishes the Barringer case from the case at bar as follows:

"Proceeding one step further we find that on April 28, 1904, after the death of the testator in the Hayes v. Barringer case, that congress passed an act providing for the appointment of four additional judges in the Indian Territory, and among other things enacted: 'All the laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their operation, so as to embrace all persons and estates in said territory, whether Indian, Freedmen or otherwise and full and complete jurisdiction is hereby conferred upon the district courts in said territory in the settlement of all estates of decedents, the guardianship of minors and incompetents, whether Indian, Freemen or otherwise.' (33 Stat. 573)."

That by the law of wills contained in chapter 155, Mans. Digest thus extended, Maggie Taylor was empowered to devise by last will and testament all her estate, real and personal.

We do not believe this contention can be sustained. The effect of the act of April 28, 1904 (33 Stat. 573) was to make the laws of Arkansas theretofore put in force in the Indian Territory, applicable to another class of persons and estates, towit: Indians and their property insofar as it was alienable under the acts of congress then bearing upon it. The extension of the law of wills enabled the Indian to devise all his alienable property by will made in accordance with the laws of the state of Arkansas, but did not operate to remove any of the restrictions theretofore placed upon lands of Indians by act of congress. The law in relation to restrictions is stated by Sanborn, Circuit Judge, in Hayes v. Barringer, supra, as follows:

"A homestead, consisting of land equal in value to 160 acres of average allotable land, selected by the allottee, 'shall be inalienable during the life-time of the allottee, not exceeding twenty-one years from the date of the certificate of allotment.' Section 12 (32 Stat. 642). The remainder of the land allotted 'shall not be alienable by the allottee, or his heirs, at any time before the expiration
42 of the Choctaw and Chickasaw governments (which expired March 4, 1906 (30 Stat. 512), for less than its appraised value,' but may be alienable one-fourth in acreage in one year, one-fourth in acreage in three years, and one-half in acreage in five years, from the date of the patent. Section 16 (32 Stat. 643). Lands allotted shall not be affected or incumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated, nor shall said land be sold except as herein provided. Section 15 (32 Stat. 642)."

As a will is held to be an alienation within the meaning of the supplemental agreement, and as the act of congress, April 28, 1904, supra, did not have the effect of removing any of the restrictions placed upon Indian allotments by said agreement, it must be held that Maggie Taylor did not have power to devise her allotment by will, and the judgment of the court below must be affirmed.

All the Justices concur, except Dunn, J., absent, and not participating.

43 In the Supreme Court of the State of Oklahoma.

No. —.

RUAL F. TAYLOR, Plaintiff in Error,

vs.

Mrs. ALLIE PARKER, nee Collins, JOSEPH D. McCOY, W. L. T. Hilton, Legal Guardian of John Collins, Berry E. Collins, and Virgil Collins, Defendants in Error.

*Petition for Rehearing.*

Now comes Rual F. Taylor, Plaintiff in Error in the above styled and numbered cause, and respectfully moves the Court to grant him a re-hearing herein, and to enter its judgment reversing the judgment of the trial court before whom this cause was tried, and as ground therefor says:

This court in its opinion affirming this cause holds that the effect of the Act of April 28, 1904, was to make the laws of Arkansas, theretofore put in force in the Indian Territory, applicable to another class of persons and states, to-wit: Indians and their property in so far as it was alienable under the Acts of Congress then bearing upon it, and this Court in its opinion affirming this cause holds that the will in question is an alienation within the meaning of The Supplemental Agreement, and that the Act of Congress approved April 28, 1904, did not have the effect of removing any of the restrictions placed upon the deceased, Maggie Taylor, and therefore the

said Maggie Taylor did not have the power to devise her allotment by will.

We respectfully submit that the Court is in error in holding that the Act of Congress of April 28, 1904, did not empower Maggie Taylor to devise her allotment by will. It is contended by counsel for defendants in error, which contention is upheld by this
44 court in its opinion affirming this cause, that the Act of Congress referred to only empowers Indians to make wills as to that class of property not restricted by the provisions of the Supplemental Agreement. We say that when Congress specifically placed in force the law of will as contained in Mansfield Digest, that it effectually empowered all Indians, including Maggie Taylor, to devise her allotment by will. To hold otherwise would be to say that Congress in making provision for the devise of property by Indians would have to specifically enact that Indians could devise their Indian allotment by will and testament. In the Act of Congress, approved April 26, 1906, Congress enacted in Section 23 of said Act: "Every person of lawful age and sound mind may by last will and testament devise and bequeath all of his estate, real and personal, and all interest therein; provided, that no will of full blood Indians devising real estate shall be valid, for such last will and testament disinherits the parent, wife, spouse, or children of such full blood Indian, unless acknowledged before and approved by a Judge of the United States Court for the Indian Territory, or United States Commission."

It could just as well be contended that the Section of the Act above quoted did not empower an Indian to will his allotment for the reason that no language is contained therein repealing the restriction on the alienation of the individual allotment of such Indian. We say that it was not necessary for Congress to specifically enact that the restrictions on alienation are repealed when an Indian makes a will devising his allotment. If it was necessary then Section 23 of the Act of 1906, did not and does not empower an Indian to make a will.

45 When Congress by the Act of 1904 specifically placed in force the statute of wills as contained in Mansfield's Digest it specifically enacted that every person of lawful age and sound mind may by last will and testament devise and bequeath all his estate, real and personal, and all interest therein. It also specifically enacted that this statute should apply to all Indians and to their estates, a portion of the estates of Indians was their individual allotment.

We believe that it is doing violence to the Act of Congress and to the plain language of this Act to hold that Maggie Taylor did not have the power to devise her allotment by the will in question.

We respectfully submit that this court should grant a rehearing in this cause, and that the judgment of the trial court is reversed.

C. C. HATCHETT,
*Attorney for Plaintiff in Error.*

Endorsed: No. 1734. Rual F. Taylor, plaintiff in error, vs. Mrs. Allie Parker et al., defendants in error. Petition for rehearing. (Filed May 25, 1912. W. H. L. Campbell, Clerk.) C. C. Hatchett, attorney for plaintiff in error. (Overruled.)

46 Supreme Court, May Term, 1912, June 25", 1912, Sixteenth Judicial Day.

And thereafter at the May, 1912, Term of said Court, on the 25" day of June, 1912, the following proceeding was had in said cause, to-wit:

#1734.

RUAL F. TAYLOR, Plaintiff in Error,
vs.
Mrs. ALLIE PARKER et al., Defendants in Error.

And now on this day it is ordered by the court that the petition filed herein for rehearing, be, and the same is hereby overruled.

47 In the Supreme Court of the State of Oklahoma.

I, W. H. L. Campbell, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 46 pages, numbered from 1 to 46, both inclusive, are a true and complete copy of the Petition in Error and case made, Journal entry of judgment affirming the cause, opinion of the court, Petition for Rehearing, Journal Entry overruling the same, Stipulation filed September 6, 1912, as to what papers shall be included in transcript, Bond on Writ of Error, Order approving Bond, and stipulation filed September 14, 1912, as to what papers shall be incorporated in transcript; and the original Citation with proof of service thereof, Petition for Writ of Error and Assignment of Errors, Writ of Error, in cause No. 1734, Rual F. Taylor, Plaintiff in error, vs. Mrs. Allie Parker, et al., Defendants in error, as the same remain on file and of record in my office.

In witness whereof, I hereto set my hand and affix the seal of said court, at Oklahoma City, Oklahoma, this 18th day of September, 1912.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,
*Clerk of the Supreme Court of the State of Oklahoma.*
By JESSIE PARDOE, *Deputy.*

Endorsed on cover: File No. 23,364. Oklahoma Supreme Court. Term No. 349. Rual F. Taylor, plaintiff in error, vs. Mrs. Allie Parker (nee Collins), Joseph D. McCoy, W. L. T. Hilton, legal guardian of John Collins et al. Filed September 23d, 1912. File No. 23,364.

IN THE

# *Supreme Court of the United States*

October Term 1913

Number 58

RUAL F. TAYLOR,

*Plaintiff in Error,*

vs.

MRS. ALLIE PARKER (nee Collins), JOSEPH D. McCOY, W. L. T. HILTON, legal guardian of John Collins, Berry E. Collins and Virgil Collins,

*Defendants in Error.*

## STATEMENT OF CASE, SPECIFICATION OF ERRORS AND BRIEF OF ARGUMENT OF PLAINTIFF IN ERROR.

## ABSTRACT OR STATEMENT OF THE CASE

H. A. Ledbetter,
*For Appellant.*

Oklahoma Law Brief Co., 219-20-21 Majestic Bldg., Oklahoma City

# INDEX



## List of Authorities

and sisters, who, it is alleged, are her sole
s at law.

her alleged in said petition that the said will
t of the said Maggie Taylor, deceased, was
ate; that the matter of the probate of said
n on appeal to the Supreme Court of Okla-
lgment rendered by said court directing the
of; that the defendant, Rual F. Taylor, who
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is claiming the ownership, dominion and con-
has ousted the defendants in error, there
m the possession of same and that the said
r was asserting his title, interest and owner-
ands by virtue of said will.

her alleged in said petition that said will was
as it attempted to bequeath and devise said
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f an Act of Congress entitled "An Act to
onfirm an Agreement With the Choctaw and
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proved July 1st, 1902.

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error" have judgment for the possession of
and the rents and profits thereof.

Supreme

RUAL F. T

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ABSTRA

On the
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W. L. T. Hi

An answer was filed by Rual F. Taylor, now plaintiff in error, which is found on pages 14 and 15 of the transcript of the record in this cause. By this answer the defendent admits the allotment of the lands sued for in the name of Maggie Taylor, nee Collins; that patents therefor were issued as alleged; that the defendants in error, plaintiff in the trial court, were the sole and only heirs of the said Maggie Taylor, nee Collins; that she died on the date alleged; that a mandate of the Supreme Court of Oklahoma had been issued and transmitted to the proper court directing the probate of said will; that the only claim of the said Rual F. Taylor to said lands and premises was under and by virtue of said will; that the said will had been duly and regularly admitted to probate in the proper court, and asserted the absolute ownership of said lands and premises under and by virtue of said will, and said answer concluded with a prayer for judgment decreeing the said Rual F. Taylor to be the owner of said real estate in fee simple, for cost and general relief.

On the 31st day of January, 1910, said cause came on for trial in the District Court of Johnston County, Oklahoma, and on said date a judgment was rendered on the pleadings and on an agreement made in open court that the facts were as stated herein, by which judgment the defendants in error are awarded the possession of said lands and the will of said Maggie Taylor, nee Collins, in

so far as it attempts to devise said lands is adjudged void on the ground that the testatrix was incapable of making a valid will devising her allotment as a member of the Chickasaw Tribe of Indians.

An appeal was taken from said judgment to the Supreme Court of Oklahoma and on the 14th day of May, 1912, the judgment of the District Court of Johnston County, Oklahoma, was affirmed by the Supreme Court of Oklahoma in an opinion rendered by Kane, Justice, found on pages 22, 23 and 24 of the transcript of the record; a petition for re-hearing was filed within the time allowed by the rules of the Supreme Court of Oklahoma, which said petition was on the 25th day of June, 1912, overruled by said court, and thereafter and within sixty days of the overruling of said petition for re-hearing a petition for a writ of error and assignment of errors was filed in said court and allowed by the Chief Justice thereof and said cause filed here.

II.

## SPECIFICATION OF ERRORS

Plaintiff in error complains of and assigns the following errors committed by the Supreme Court of Oklahoma in said cause as follows, to-wit:

First: Said court erred in holding that the words, "alienable" and "inalienable" used to restrict the disposition of lands in the "supplemental agreement with the Chickasaws and Choctaws,"—Act of July 1, 1902, 32 Statutes 642, 643, pp. 12, 15, 16, included disposition of allotted lands by will.

Second: Plaintiff in error further assigns as error the action of the Supreme Court of Oklahoma, in holding that the effect of the Act of April 28, 1904 (33 Statutes 573), was to make the laws of Arkansas theretofore in force in the Indian Territory applicable to another class of persons and estates, to-wit: Indians and their property in so far as it was alienable under the Acts of Congress then bearing upon it, and further holding that the extension of the law of wills as contained in Mansfield's Digest of the Statutes of Arkansas in force in the Indian Territory did not enable the testatrix in the case at bar to devise her allotment of land when restrictions on the alienation thereof had not been specifically removed.

THIRD: Plaintiff in error further assigned as error, that the Supreme Court of Oklahoma erred in holding that the will of Maggie Taylor, nee Collins, relied upon by the plaintiff in error to give him title to and the right of possession of the lands and premises in controversy, was null and void in so far as it attempted to will her individual allotment as a Chickasaw Indian.

## III.

## BRIEF OF ARGUMENT

The three specifications of error can properly be presented under one proposition. At the time of the death of Maggie Taylor, nee Collins, which was on the 25th day of March, 1905, did she have the right to make a will effectual to convey her Indian allotment, being the lands and premises involved, to her husband, plaintiff in error? If she did, the action of the trial court in rendering a judgment in favor of the defendants in error and the action of the Supreme Court of Oklahoma in affirming said judgment was erroneous. If she did not, then the judgment of the trial court and its subsequent affirmance was correct.

On the 1st of July, 1902, Congress passed an Act entitled "An Act to Ratify and Confirm an Agreement with the Choctaw and Chickasaw Tribes of Indians and for Other Purposes." (32 Statutes, 641.) This act provided for a

number of things, among which were the provisions for the allotment of lands in severalty to the various members of the Choctaw and Chickasaw Tribes of Indians. Other provisions of this Act imposed restrictions on the alienation of the lands allotted to the members of the two tribes, which said provisions in so far as material to this case are numbered sections 12, 13, 15, and 16. These provisions are as follows:

Sec. 12:

"Each member of said tribes, shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land equal in value to one hundred and sixty acres of the average allotable land of the Choctaw and Chickasaw nations, as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment, and separate certificate and patent shall issue for said homestead."

Sec. 13:

"The allotment of each Choctaw and Chickasaw freedman shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate allotment."

Sec. 15:

"Lands allotted to members and freedmen shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated under this act, nor shall said lands be sold except as herein provided."

Sec. 16:

"All lands allotted to members of said tribes, except such land as is set aside to each for a homestead as herein provided, shall be alienable after issuance of patent as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years; in each case from date of patent: Provided, That such land shall not be alienable by the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw tribal governments for less than its appraised value."

On April 28th, 1904, the President approved an Act of Congress entitled, "An Act to Provide for Additional Judges in the Indian Territory and for Other Purposes" (23 Statutes 573), the concluding section of which is as follows:

"All the laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their operation, so as to embrace all persons and estates in said Territory, whether Indian, freedman or otherwise, and full and complete jurisdiction is hereby conferred upon the district courts in said Territory in the settlement of all estates of decedents, the guardianship of minors and incompetents, whether Indians, freedmen or otherwise."

Prior to the adoption of the section last referred to the law of wills as contained in Mansfield's Digest of the Statutes of Arkansas, same being Chapter 155 thereof, had never been in force in the Indian Territory so as to effect members of the Choctaw and Chickasaw Tribes of Indians. Chapter 155 of Mansfield's Digest of Statutes of Arkansas, was put in

force in so far as citizens other than the Five Civilized Tribes are concerned by the Act of Congress approved May 2nd, 1890. (U. S. Statutes at Large, Vol. 26, C. 182, p. 81.)

By the Act of 1904 above referred to the chapter on wills in Mansfield's Digest was clearly put in force as to all Indians in the Indian Territory including the Choctaw and Chickasaws and jurisdiction was conferred upon the United States courts to administer upon such estates. Prior to April 28th, 1904, the United States Courts had no jurisdiction to settle estates of members of the Choctaw and Chickasaw Tribes of Indians.

*In re Poffs Guardianship*, 103 S. W. 765.
*Hayes* v. *Barringer*, 104 S. W. 937.
*Elliot* v. *Garvin*, 104 S. W. 878

Maggie Taylor, nee Collins, died on the 25th of March, 1905, and made the will, under which plaintiff in error claims, on the 22nd of March, 1905. The trial court held that the will of Maggie Taylor in so far as her allotment is concerned was an alienation of land within the meaning of sections 12, 15 and 16 of the Choctaw-Chicksaw Supplemental Agreement, and was therefore void in so far as said lands are concerned; this judgment was affirmed by the Supreme Court of Oklahoma. The Supreme Court of Oklahoma in its opinion held that the Act of April 28th, 1904, made the laws of Arkansas, theretofore in force in the Indian Territory, applicable to another class of persons and estates,

to-wit: Indians and their property in so far as it was alienable under the Acts of Congress then bearing upon it; that the extension of the law of wills enabled Maggie Taylor to devise all her alienable property, but did not enable her to will her allotment because the same was inalienable at the time she made her will and the will was an alienation. This holding we say is error for two reasons: (a) We contend that the will is not an alienation within the meaning of sections 12, 15 and 16 of the Choctaw-Chickasaw Supplemental Agreement, and (b) if the same is an alienation, the testatrix was empowered to make the will devising her allotment by reason of the Act of Congress approved April 28th, 1904.

(a)

Is the will in question an alienation within the inhibitions contained in sections 12, 15 and 16 of the Choctaw-Chickasaw Supplemental Agreement?

It is undoubtedly true that in every accustomed sense and perhaps by the great weight of judicial interpretation the words "alienable" and "alienation" include disposition of real estate by will as well as by conveyance. As used by Congress in the sections of the Supplement Agreement heretofore referred to we do not believe that such an interpretation can be placed upon the language used. The restrictions imposed in section twelve of the Act referred to pro-

hibit the alienation of the homestead portion of the testatrix's allotment during her life time and only during her life time. In the case of *Mullen* v. *United States*, 224 U. S., page 448, in the opinion by Mr. Justice Hughes in construing the section referred to the following language is used:

> "It will be observed that the homestead lands are made inalienable 'during the life time of the allottee, not exceeding twenty-one years from the date of certificate of allotment.' The period of restriction is thus definitely limited, and the clear implication is that when the prescribed period expired, the lands were to become alienable; that is, by the heirs of the allottee upon his death, or by the allottee himself at the end of the twenty-one years. Thus, with respect to homestead lands, the supplemental agreement imposed no restrictions upon alienation by the heirs of a deceased allottee."

By section 16 of the Act referred to, that portion of the testatrix land which were allotted to her in addition to her homestead is alienable after issuance of patent as follows: one-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years; in each case from date of patent. By section 15 of the Act referred to, it is provided that all allotted lands shall not be affected, or incumbered by any deed, debt or obligation contracted prior to the time at which the allotted land may be alienated.

From these Acts it is clear that Congress restricted for certain definite periods any actual transfers or incumbrances of the allotted lands of the testatrix. By section

15 of the Act referred to it is clear that the restriction was against the sale or incumbrance by deed, debt or obligation. Alienation by a will is not an alienation by deed or for a debt or obligation. We say that the fair meaning and interpretation of these sections of the statute show that the intention of Congress was to forbid and limit conveyances, sales and gifts *inter vivos* only.

In so far as the homestead portion of the lands involved are concerned the restriction on alienation is against the allottee and him alone. There is no restriction running with the land. Upon the death of the allottee the homestead was alienable by his heirs. (See *Mullen* v. *United States*, 224 U. S. 448.) In so far as that portion of the allotment in excess of homestead is concerned, as we understand the opinion of this court in the Mullen case, the restriction does not run with the land except that it cannot be sold by the allottee or his heirs for less than the appraised value, provided the sale is made before the expiration of the tribal government. That the will is not an alienation within the meaning of the sections referred to see the following authorities: *Vining* v. *Willis*, 40 Kansas 609; *Burbank* v. *Rockingham Mutual Fire Ins. Co.*, 24 N. H. 550; 57 American Decisions 300; *MacRae* v. *MacRae*, 57 S. W. 423; *Bostick* v. *Chovin*, 33 S. E. 508; *Turner* v. *Bennett*, 70 Ill. 263; *Caro* v. *Caro*, 34 Southern 309.

One of the ablest expositions of the meaning of the statutory or constitutional prohibition restricting "alienation" is found in the case of *Vining* v. *Willis* above referred to. In that case a provision of the Kansas Constitution came before the Supreme Court of that state in which it was necessary for the court to determine whether a will was an alienation within the meaning of a section of the Constitution. Section 9 of Article 15 of the Constitution of that state prohibited the alienation of the homestead without the joint consent of the husband and wife, the language being that the homestead "shall not be alienated without the joint consent of husband and wife, when that relation exists."

It was contended that the will was an alienation within the prohibition of this section of the constitution. Mr. Justice Valentine, who rendered the opinion of the court, uses the following language, which is in point here:

> "A will never divests the owner of his property or of any interest therein. No interest passes by the will to the intended devisee; nothing that he can sell, or transfer, or incumber; nothing that will pass from him to heirs or that he can devise or bequeath; and the will may be revoked by the testator immediately after its execution or at any time afterward and before his death. A person might execute a thousand wills for the same property, yet no one of such wills would transfer anything; but when the testator should die the devisee mentioned in the last will executed would, under and by virtue of the statutes, take the property. It would not be the will, however, but death that would take the property from the testator; and it would be

death, the g*f Vining* v. *Willis* and similar to the ques-
that would at bar makes use of the following language:

And furthto its being an alienation, the great trouble
back, and has reference to the time when
reasons thus: ntary provision really comes into existence,

"Now a v charge by will, which is ambulatory, and
rate an esta e effect until after the death of the testa-
away from said to be 'an alienation' in the lifetime of
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last momeng before, but it was inchoate, and gave no
tinct, althorver until the death of the testator, which
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does not pad ceased to exist and was transmitted to
because of children."
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therefore d mestead portion of the lands in controversy,
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be given a restriction only upon the allottee,—no
a "union," ing with the land, and in view of the fact
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the Mullens case, the same thing is true as to that portion of the lands involved in excess of homestead.

(b)

Even if the will before the Court in this case be construed to be an alienation within the meaning of the sections of the Choctaw-Chickasaw Supplemental Agreement heretofore referred to, we submit to the Court that under the Act approved April 28th, 1904, which has been heretofore quoted, there is specific authority given for the testatrix to make the will in question and specific authority given to make the will effectual to convey her individual allotment as a Chickasaw Indian. The Supreme Court of Oklahoma took the view that the Act referred to conferred the right on the testatrix to make a will effiectual to convey her unrestricted land, and further held that the Act was not intended to give the textatrix the power to will her allotted lands,—at that time restricted. We do not believe that this construction of the Act in question is sound.

As we have heretofore shown, at the time of the passage by Congress of this Act, there was a mixed and incongruous set of laws in force in the Indian Territory. So far as persons other than Indians were concerned they had the power to make a will. So far as Indians were concerned they had only their tribal laws and in as much as their tribal laws did not contemplate the ownership of land in sever-

alty no provision was made for the disposition of allotted lands by will. Accordingly Congress put in force all of the laws of Arkansas as contained in Mansfield's Digest and which had theretofore been put in force in the Indian Territory so as to make them applicable to members of the Five Civilized Tribes and all other persons, whether Indian, freedman or otherwise. This was the same thing as if Congress had word for word enacted the law of wills as contained in Chapter 155 of Mansfield's Digest.

The language of the Act of 1904 is very general and at the same time definite and specific. It puts in force all the laws of Arkansas theretofore in force in the Indian Territory so as to embrace all persons and estates, whether Indian, freedman or otherwise. Congress was evidently legislating with reference to the members of the Five Civilized Tribes, Indian freedmen, etc. It is evident that the purpose of Congress was to substitute a complete system of laws applicable to all Indians and place them on the same footing as other persons.

By the Act of 1904, Congress in effect said that all the laws of Arkansas theretofore in force in the Indian Territory, including the law of wills, should be made applicable to every Chickasaw or Choctaw Indian. Undoubtedly this language would not be sufficient to remove restrictions on alienation. That is, the right to sell, mortgage

or incumber, but it is, in our judgment, sufficient to empower a Chickasaw Indian to make a will devising his individual allotment. There was no specific restriction ever imposed against a Chickasaw Indian making a will. The only prohibition that can be urged is found in the sections of the Supplemental Agreement heretofore referred to. In as much as these sections do not specifically prohibit the making of a will unless the word "alienate" is construed to mean a devise, we say that the Act of 1904 conferred the specific authority on the testatrix in the case at bar to devise her allotment.

We therefore submit that the judgment of the Supreme Court of the State of Oklahoma be reversed with directions to the trial court to enter a judgment in favor of the plaintiff in error.

H. A. Ledbetter,

*For Appellant.*

IN THE

# Supreme Court of the United States

OCTOBER TERM 1913

NUMBER [redacted] 58

RUAL F. TAYLOR

*Plaintiff in Error*

vs.

MRS. ALLIE PARKER, (nee Collins), JOSEPH D. McCoy, W. L. T. HILTON, legal guardian of John Collins, Berry E. Collins and Virgil Collins,

*Defendants in Error.*

## BRIEF OF ARGUMENT OF DEFENDANTS IN ERROR

Cornelius Hardy and
A. C. Cruce, W. I. Cruce and
W. R. Bleakmore,

*For Defendants.*

Parker Printing Co., Ardmore, Okla.

IN THE

# Supreme Court of the United States

## OCTOBER TERM 1913

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**NUMBER 349**

RUAL F. TAYLOR,

*Plaintiff in Error.*

vs.

MRS. ALLIE PARKER NEE COLLINS, JOSEPH D. McCOY, W. L. T. HILTON, Legal Guardian of John Collins, BERRY E. COLLINS and VIRGIL COLLINS.

*Defendants in Error.*

## BRIEF OF ARGUMENT.

Not having the record before us, we will not undertake to make a statement of this case, but accept the statement as made by plaintiff in error in his brief, on pages one to five, as correct.

There is only one point raised by the plaintiff in error by his brief, and by the assignment of errors herein, that is, whether or not Maggie Taylor, nee Collins, could, on the 25th day of March, 1905, dispose of the land in controversy by will.

Two reasons are presented by the plaintiff in error why, as he contends, that said Maggie Taylor could make said will First: That the will in question was not an alienation of the land; and, second: That if it was the Act of Congress approved April 28th, 1904, which provided for additional judges in the Indian Territory, and for other purposes, put in force in the Indian Territory the Arkansas probate laws, and therefore authorized Maggie Taylor to make the will in question.

It seems to us that both of these contentions are without merit, no law has been cited by plaintiff in his brief to uphold either. Both of these questions were presented by the plaintiffs in the supreme court of the state of Oklahoma, and were decided by the supreme court of Arkansas in favor of the defendantts in error herein. See the decision of the supreme court of Oklahoma on page 22 of the record.

It is conceded by plaintiff in error in his brief, on page 22 of the record.

It is conceded by plaintiff in error in his brief on page 11, that the great weight of authority is that alienation of lands include the disposition of the same by will, and only cites one decision of any importance that undertakes to hold to the

contrary, and that is a decision of the State of Kansas, styled Vining vs. Willis, reported in 40 Kan. at page 609.

The circuit court of appeals, however, for the eighth circuit, in a decision rendered by Judge Sanborn in the case of Hayes vs. Barringer, at page 507, 93 C. C. A., expressly holds that sections 12, 13 and 15 of an Act of July first, 1902, passed by the Congress of the United States, and entitled:

> "An Act to ratify and confirm an agreement with the Chickasaw and Choctaw Tribes of Indians, and for other purposes," holds as follows:

The 32d Statute, 641, prohibited an Indian from disposing of his land by will, and held that the words "alienable" and "inalienable" included the disposition of real estate by will, and in that decision they specifically referred to the Kansas case of Vining vs. Willis, and hold that the Kansas case has no application or bearing upon the construction that should be placed upon these Acts of Congress of the United States. In other words, the court, in that case, was construing the very statute that is under investigation in this case, and held that an Indian could not dispose of his allotment by will; and in speaking of said decision of the Kansas court, Judge Sanborn uses this language:

> "The decision is neither controlling nor very persuasive of the meaning of the words "alienable" and inalienable" in Acts of Congress and agreementts with

Indian nations, where they are used to carry into effect the settled and salutary public policy of the nation and of the tribes to prevent shrewd and intelligent men from alienating simple, unlearned, and improvident Indians and their heirs from their homesteads and lands. The question here is not whether or not it is the act of a testator or death that alienates a testator from his propery, but it is: What did the Congress of the United States and the Chickasaws and Choctaws mean when they agreed and enacted that the lands of the latter should be inalienable for spcified times? It is more important that rules and the meaning of words in the law of real property shall be certain and fixed, than that they shall be logical, or even right. If they are certain and unchangeable, all men may safely act, and acquire and protect their rights in reliance upon them; but if they are to be changed whenever the reflection of a brilliant ineellect may find, or the ingenuity of an inquiring mind may discover, some reason for a modification, there will be little security to titles in property.

"Where words has acquired a well-understood meaning by judicial interpretation or definition, it is to be presumed that they were used in that sense in a subsequent statute, unless the contrary clearly appears. United States vs. Trans-Missouri Freight Association, 58 Fed. 58, 114, 7 C. C. A. 15, 71, 24 L. R. A. 73. It is a familiar rule of construction that a word or term which has a common meaning, well understood, is preshmed to be used in its accustomed sense. Brun vs. Mann, 151 Fed. 145, 156, 80 C. C. A. 513, 524, 12 L. R. A. (N. S.) 154. The words 'inalienable' and 'alienable' are familiar terms, commonly used in relation to

the disposition of real estate. In their accustomed sense, and by the great weight of judicial interpretation and definition, they included the disposition of real estate by will, as well as by conveyance, when the Acts of Congress and the agreements under consideration were enacted, and it was undoubtedly in that sense that Congress and the Indian Nations used them in these acts and agreements. They intended to restrict, and by the use if these terms they did restrict, the disposition of the property of the Choctaws and Chickasaws by will as well as by deed."

See also in support of this authority:

Blackstone's Comm. (Lewis Ed.) cc. 19 and 23; Burbank vs. Rockingham M. F. I. Co., 24 N. H. 550, 558, 57 Am. Dec. 300; Lane vs. Maine Mutual Fire Ins. Co. Co., 12 Me. 44, 28, Am. Dec. 150; Harty vs. Doyle 49 Hun. 410, 3 N. Y. Supp. 574, 575; Butler vs. Fitzgerald, 43 Neb. 192, 204, 61 N. W. 640, 27 L. R. A. 252, 47 Am. St. Rep. 741, 750; Anderson's Law Dictionary, p. 48; Kerr on Real Property, 267; Jackson vs. Thompson, 38 Wash. 282, 80 Pac. 454, 456; United States vs. Zane, 4 Ind. T. 185, 69 S. W. 842, 844, 845.

In the case of Jackson vs. Thompson et al, the supreme court of Washington reported in the 80 Pac. at page 454, Judge Dunbar expressly held that a deed by the United States to an Indian, forbidding alienation, deprives the allottee of the power to dispose of the property by will. It will be seen by reference to said decision that there was a stipulation in the patent which reads:

"Shall not be alienated or leased for a longer term than two years, and shall be exempt from levies, sale, or forfeiture, which conditions shall continue in force until a state coustitution embracing such lands within its boundaries shall have been formed, and the legislature of the state shall remove the restrictions, etc."

It was contended in that case that inasmuch as the deed, or patent gave the fee simple title to the Indian, that the restrictions placed upon it by the wording of the patent and by the treaty that was kept in the patent, was not such a restriction as would prevent the patentee from disposing of the same by will, and that the word "alienated" as used therein, did not include the disposing of it by will, and the court, in passing upon said case, uses this language:

"The Indians are wards of the government. These arrangements and provisions are provisions in their interest and by their consent, as indicated in the solemn treaties executed. The government, from the necessities of the case, in consideration of the inexperience of the Indians, was compelled to insert these provisions in deeds which it issued to them, to prevent them from becoming the prey of sharpers and speculators, who would, for an insufficient consideration, obtain their lands, the ultimate result being that the Indians would become pensioners upon the government; and the mutual interests of the Indians and the government demanded some such regulations. It was certainly within the power of the government to place any restrictions upon the deeds which it issued to the Indians that it saw fit. It is insisted by the respondents, as an argument against

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can be no 28, 1904 authorized the testatrix in this case
'alienate' mis, as we think, without any merit whatever.
position by of said act that could possibly be relied upon

The 24 N. H. follows:

Burbank, Admr. v e laws of Arkansas heretofore put in force in
Judge Eastman u Territory are hereby continued and extended

"To alie eration so as to embrace all persons and es-
to another; id territory, whether Indians, freedmen, or
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to the terms t such a construction can be given to it.

It must be remembered that prior to the passage of this act that these same laws were then in force in the Indian Territory, and that they were not put in force by that act, but were simply continued in force by it. Prior to that time, the Indian courts had jurisdiction of the settlements of the Indians' estates, and this act only undertook to give to the United States court, jurisdiction to settle these estates, and took it from the Indian courts where it had previously been lodged.

If the act of 1904 authorized Indians to will their allotment, why was the necessity of the acts of April 26, 1906, and of section 29 of May 27, 1908? The first of which reads as follows:

> "Every person of lawful age and sound mind may by last will and testament devise and bequeath all of his estate, real and personal, and all interest therein: Provided, That no will of a full-blood Indian devising real estate shall be valid, if such last will and testament disinherits the parent, wife, spouse or children of such full-blood Indian, unless acknowledged before and approved by a judge of the United States court for the Indian Territory, or a United States commissioner."

That is the first time a member of the Chickasaw or Choctaw tribe of Indians was authorized to will his lands. The act of May 17, 1908, is the same in substance as the act of April 26, 1906, except the last act authorizes the approval of a full-blood Indian's will by the judge of the county court of the state

of Oklahoma, the first act having been passed before we had county judges.

Certain it is that Congress at the time it passed the act of April 26, 1906, had not intended by anything that they had done previous thereto, to authorize an Indian allottee to will his lands. If they had, they would not have passed that act. We, of course, now are talking about Indians of the Chickasaw and Choctaw nations, the ones now under discussion.

Chapter 155 of Mansfields' Digest was put in force in the Indian Territory by act of congress in 1890. It was in force at the time of the adoption of the supplemental agreement in 1898, and at the time of the adoption of sections 12 and 16 thereof, forbidding the alienation of Indian allotments. There is nothing in sections 12 and 16 of the supplemental agreement, preventing Indians from alienating any property they may have, except such property as they may have received by reason of their allotments, and we know of no objection that could be urged to the adoption of such a provision limiting their right to alienate these lands at the time they received them. This could only be construed to be a special act as to the alienation of that particular character of property, and was not and could not in any way be in conflict with the general law on the subject of alienation of property.

The passage of the act of April 28, 1904, did not undertake

to make any further restrictions upon the alienation of land, or to enlarge upon them in any way. It simply extended the laws that had theretofore been put in force over the territory, and gave the United States courts jurisdiction to enforce the probate laws as to the Chickasaw and Choctaw nations, which jurisdiction had theretofire been lodged with the Indian courts. There was no other law in force in the Indian Territory other than the law put in force by Mansfield's Digest authorizing the alienation, by will or otherwise, of real estate, and we do not believe that it will be contended that had an Indian at that time owned land in the state of Texas, that he could not, under the Arkansas statute on wills, have alienation or willed this land to whomever he might see proper, keeping, however, within the rules as laid down by said statute. Therefore we contend that it could not have been the intention of congress at the time they passed the act of April 28, 1904, to repeal the sections heretofore quoted, 12 and 16 of the supplemental agreement, and that had it so intended, it would have said so in so many words. The language used is as follows:

> "All the laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their operation, so as to embrace all persons and estates in said territory, whether Indian, freedman

or otherwise, and full and complete jurisdiction is hereby conferred upon the district courts in said territory in the settlement of all estates of decents, the guardianship of minors and incompetents, whether Indian, freedmen or otherwise."

We understand the rule to be that where there is a general statute dealing with a subject and a special statute on the same subject, that if there is any conflict between the two, that the special statute will prevail over the general, and even conceding that the plaintiff is right in his argument and conclusion, we would simply have in force the Arkansas statute authorizing the making of wills, and sections 12 and 16 of the supplemental agreement, limiting the time in which an Indian could make a will to his particular allotment. These laws would not be in conflict one with the other, because it only limits the time in which the Indian can will this particular class of property.

In the 36th volume of Cyc., page 1151, we have this language:

"Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy, but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special

> statute is later, it will be regarded as an exception to, or qualification of, the prior general one, and where the general act is later, the special will be constructed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication."

It was the evident intention of congress at the time of the making of the supplemental agreement in 1898 that as to the land allotted to Indians in the Chickasaw and Choctaw nations, that they should be inalienable as to homesteads, for twenty-one years, and as to surplus until after the lapse of one, three and five years thereafter. That this was a wise policy, there can be no doubt.

This law remained in force without any attempt whatever upon the part of congress to change it, until April 26, 1906, when permission was given to dispose of their lands by will, with certain limitations thereon. That is, they had to be approved if full-bloods, by the United States court or United States commissioner; and to show that congress intended what they said thereby, they followed it up on May 17, 1908, by re-enacting the same law, word for word, and adding that in addition to the approval of the full-bloods' will by the United States judge or commissioner, it might be done by the judge of the county court. Certain it is that congress at that time was putting limitations upon these lands, and was putting a limitation upon the statutes of Arkansas that had been put in

force here, as to who was competent to make a will, as they had a right to do.

We therefore submit this brief, feeling that this case should be affirmed.

CORNELIUS HARDY
A. C. CRUCE
W. I. CRUCE, and
W. R. BLEAKMORE
*Attorneys for Defendants in Error.*

# TAYLOR *v.* PARKER.

ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 58. Submitted November 5, 1914.—Decided November 16, 1914.

In view of the evils sought to be prevented, and in aid of the expressed policy of the Indians and the United States, the prohibition on alienation by allottees under the Choctaw and Chickasaw agreement ratified by the act of July 1, 1902, c. 1362, 32 Stat. 641, should be construed as extending to devise by will.

While the act of April 28, 1904, putting in force the laws of Arkansas in the Indian Territory, enabled an Indian to dispose of his alienable property, it did not operate to remove existing statutory restrictions.

That it was the understanding of Congress that an act did not remove restrictions may be indicated by subsequent acts passed for the express purpose of removing such restrictions.

33 Oklahoma, 199, affirmed.

THE facts, which involve the application and construction of Acts of Congress imposing and affecting restrictions on alienation of lands allotted under the Choctaw and Chickasaw agreement ratified July 1, 1902, are stated in the opinion.

*Mr. H. A. Ledbetter* for plaintiff in error.

*Mr. Cornelius Hardy*, *Mr. A. C. Cruce*, *Mr. W. I. Cruce* and *Mr. W. R. Bleakmore* for defendants in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit by the heirs of Maggie Taylor, a member of the Chickasaw tribe of Indians, against the plaintiff in error, her husband and devisee, to recover her allotment, which she devised to him. The answer relied upon the

will, the plaintiffs demurred, and the courts of Oklahoma sustained the demurrer and gave judgment for the plaintiffs. 33 Oklahoma, 199. The question is whether the devise was invalid under the supplemental agreement with the Choctaws and Chickasaws ratified by the Act of Congress of July 1, 1902, c. 1362. 32 Stat. 641.

By § 12 of the above act "each member of said tribes shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land equal in value to one hundred and sixty acres of the average allotable land of the Choctaw and Chickasaw nations, as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment, and separate certificate and patent shall issue for said homestead." By § 16 all lands allotted to members of said tribes except homestead shall be alienable after issue of patent, one fourth in acreage in one year, one fourth in three years, and the rest in five years; but not for less than its appraised value before the expiration of the tribal governments. The plaintiff in error, in aid of the construction of §§ 12, 16, for which he contends, and to show that transactions *inter vivos* alone were aimed at by the word "inalienable," invokes § 15 which enacts that allotted lands "shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated under this Act, nor shall said lands be sold except as herein provided."

The land in question was allotted to Maggie Taylor in 1903, including, it would seem, a homestead; patents were issued on December 20, 1904, and were approved by the Secretary of the Interior and delivered on December 28, 1904. She made her will on March 22, and died on March 25, 1905, so that if the foregoing prohibitions extend to a devise they include the one under which the plaintiff in error claims. Obviously they could be read in a narrower

sense, and whichever interpretation be adopted it would not be helped by long discussion. In view of the evils sought to be prevented and in aid of what we understand to have been the policy of the Indians and the United States in their agreement, we are of opinion that the Supreme Court of this State was right in extending the prohibition to wills. To the same effect is *Hayes* v. *Barringer*, 93 C. C. A. 507; 168 Fed. Rep. 221. See also *Jackson* v. *Thompson*, 38 Washington, 282.

A further and distinct argument is based upon the act to provide for additional judges, etc., of April 28, 1904, c. 1824, § 2, 33 Stat. 573, to the effect that all the laws of Arkansas theretofore put in force in the Indian Territory are extended to embrace all persons and estates in said territory, whether Indians, freedmen, or otherwise, and full jurisdiction is conferred upon the district courts in the settlement of all estates of decedents, and the guardianship of minors and incompetents, whether Indians, freedmen, or otherwise. The Arkansas law of wills was a part of the law that thus had been adopted for the Indian Territory before 1904, and it is contended that the result of the above extension was to free the Indians from the restrictions so specifically imposed upon them in 1902. Of course nothing of that sort was intended. As said below (33 Oklahoma, p. 201), the extension enabled "the Indian to devise all his alienable property by will made in accordance with the laws of the State of Arkansas, but did not operate to remove any of the restrictions theretofore placed upon lands of Indians by act of Congress." That this was the understanding of Congress is indicated by the acts of April 26, 1906, c. 1876, § 23, 34 Stat. 137, 145, and May 27, 1908, c. 199, 35 Stat. 312, giving Indians power to dispose of their allotments by will.

*Judgment affirmed.*